



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.43 OF 2025

Shaikh Alim S/o Shaikh Salim, Aged about 29 years, occupation: Labourer, R/o Khurshid Pura, Ratanganj, Amravati, Tq. And Dist. Amravati (brother of detenu) **Petitioner**

-Versus-

1. State of Maharashtra,  
Through Secretary, Preventive Detention,  
Home Department (SPL) Mantralaya,  
Mumbai-32.
2. Commissioner of Police, Amravati City,  
Amravati, Tq. and Dist. Amravati. **Respondents**

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Mr. J.B.Kasat, counsel for the Petitioner.  
Mr. N.S.Rao, A.P.P. for Respondent Nos.1 and 2.

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**CORAM : NITIN W. SAMBRE AND  
MRS. VRUSHALI V. JOSHI, JJ.**  
**DATE : 07/04/2025**

**ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)**

- 1) Heard.
- 2) **Rule.** Rule made returnable forthwith. The Criminal Writ Petition is heard finally with the consent of the learned counsel appearing for the parties.
- 3) The petitioner being aggrieved by the detention order dated 17.10.2024 passed by Respondent no. 2 under Section 3(1) of the

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (hereinafter referred to as the “MPDA Act”) has filed the present writ petition.

4) The learned Advocate appearing for the petitioner challenged the impugned order which appears to have been confirmed by the State Government on 17/12/2024, which was passed by the respondent No.2 on 17/10/2024. The petitioner herein is the brother of the detenu. The order is challenged on the ground that, there is delay in passing the detention order. It is submitted by the petitioner that the last crime was committed on 16/05/2024 and the order was passed on 17/10/2024. There is no live-link. The other grounds are also mentioned by the petitioner, however the learned counsel for the petitioner has placed the reliance on the ground of delay only.

5) Three offences along with two statements are considered for passing of the detention order. Crime No. 181 of 2024 is registered for the offence punishable under Sections 143, 147, 148, 149, 452, 504, 506(B) of the Indian Penal Code, r/w Sections 4,25 Arms Act, r/w Section 135 of the Maharashtra Prohibition Act. The complainant has lodged the complaint against the detenu. It is alleged that the detenu

along with his friends gave threats to the grandfather of the complainant and used abusive language and on a complaint lodged by the complainant, the crime is registered. It is also alleged that all the persons were having knife and sword in hands and they gave threats to the people who gathered in the said area. The detenu was arrested in the said crime and was released on bail.

6) In another offence i.e Crime No.130 of 2024, for the offence punishable under Section 294 and 506(b) r/w 34 of the Indian Penal Code and under Sections 4 and 24 of the Arms Act and Section 135 of the Maharashtra Prohibition Act is registered. In this crime also, when the complainant lady was at home, the detenu along with his friends went to the house of complainant with knives and wooden sticks. They gave threats and used abusive language. Therefore, she has lodged the complaint and the crime is registered. The detenu was arrested and was released on bail.

7) Crime No.184 of 2024 is registered for the offence punishable under Sections 4/25 of the Arms Act, r/w Section 135 of the Prohibition Act. The information was received that the detenu is standing with deadly weapon in front of his house, therefore, the raid was conducted. Black knife was found at the waist of the detenu, he along with his brother were standing in front of the house. Brother of detenu, was also

carrying a sharp weapon like china knife. Both the knives were recovered after panchanama from the detenu and his brother, thereafter, the notice was issued.

8) Two statements were considered for the offences about extortion of money by the detenu. In both the statements, the witnesses have stated that the detenu has extorted money by giving threats on public road. Considering both the statements and the criminal history of the detenu about crimes, which were registered during the period of six months, the detention order was passed.

9) The learned counsel appearing for the petitioner has relied on the judgment in the case of *Shivkumar Madeshwaran Devendra Vs. State of Maharashtra, through Secretary Home Department, reported in 2022, SCC online 1236* passed by this Court. It is about the delay in passing of the detention order. The petitioner has also relied on the judgment of 2005 *SCC online Jyoti Kitty Joseph ..Vs..Union of India and ors. Reported in 2025 SCC OnLine SC 509*.

10) The learned APP has opposed the petition stating that considering the nature of the offences and as the offences are of the period of last six months, there is no delay in passing the detention order. The detenu is continuously engaged in the criminal activities

though preventive action was taken against him. There is no delay as the statements were recorded on 11/09/2024 and it was verified in the month of October and the order was passed on 17/10/2024, there is no delay in passing of the detention order. Hence, prayed to dismiss the writ petition.

11) Heard the learned counsel appearing for the petitioner and the learned APP appearing for the State.

12) From the nature of crimes, which are considered for passing of the detention order, it appears that the detenu was detained as a dangerous person. While considering the nature of offence, we have to consider whether detenu is acting in a manner, prejudicial to the maintenance of public order. Section 2(a) says that :-

***“a person acting in any manner prejudicial to the maintenance of the public order means when a bootlegger, dacoit, a drug offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order”.***

It is therefore, necessary to first consider whether the crimes which are considered, affect the public order. In the case of ***Ameena Begum Vs. The State of Maharashtra and ors., [SLP (Criminal)***

*No.8510 of 2023]* the Hon'ble Apex Court has referred the decision of the Constitutional Bench of the Apex Court in the case of *Ram Manohar Lohia Vs.State of Bihar*, reported in (1966) 1 SCR 709, wherein it is observed about the distinction between law and order and public order which is as under:

54. \*\*\* Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity

**than those affecting public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State".**

13) If we peruse first two offences, abusive language was used and the detenu along with his friends went to the house of complainant along with deadly weapons. It appears that both the crimes are against an individual. In third Crime, the offence under the Arms Act is registered and he was found with deadly weapons like knife and the detenu was standing on the road. It is not mentioned, whether, he was giving threats to the people and creating terror in said area. The detenu was standing in front of his house with knife and it was seized. All the above three offences are not sufficient to come to the conclusion that the public order will be affected. The ordinary law is sufficient to take care of the crimes committed by the detenu. Hence no public order is affected.

14) The second ground raised by the petitioner is about delay in passing the detention order. On perusal of the offences, the last crime was committed on 15/05/2024 and the order was passed on 17/10/2024. However, we have to calculate the time from the date of

the recording of statement and its verification. On perusal of the statement, of confidential witnesses 'A' and 'B' it appears that the statements were recorded on 11/09/2024, verified on 14/10/2024 by the Assistant Police Inspector and seen by the detaining authority on 16/10/2024. Therefore, though the ground of delay is raised by the detenu, it appears that there is no delay in passing the detention order. On perusal of the contents in the statements, it does not amount to affect the public order. As no public order is affected, which is the requirement as per Section 2 of the MPDA Act, the detention order is required to be quashed and set aside.

15) In view of above, we find that the impugned order cannot be sustained in the eyes of law.

16) In the result, the Writ Petition is allowed in terms of its prayer clause (B). The detenu be set at liberty forthwith, if not required in any other crime.

17) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)